

with DoD Instruction 7200.9, "Financing and Reporting Costs of Military Resources Used in Civil Disturbances," January 26, 1970,<sup>4</sup> and DoD Executive Agent implementing instructions.

(b) Military assistance (Groups One, Two, and Three military resources) provided to civil authorities, under the provisions of § 215.9, will be on a reimbursable or reclaimable basis as appropriate.

## **PART 216—MILITARY RECRUITING AND RESERVE OFFICER TRAINING CORPS PROGRAM ACCESS TO INSTITUTIONS OF HIGHER EDUCATION**

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AUTHORITY: 10 U.S.C. 983.

SOURCE: 63 FR 56821, Oct. 23, 1998, unless otherwise noted.

### **§ 216.1 Purpose.**

This part:

(a) Implements the National Defense Authorization Act of 1995 (108 Stat. 2663),

(b) Implements 10 U.S.C. 983, and

(c) Implements the Omnibus Consolidated Appropriations Act, 1997 (110 Stat. 3009).

(d) Updates policy and responsibilities relating to the management of covered schools that have a policy of either denying, or effectively preventing military recruiting personnel entry to their campuses, access to their students, or access to student recruiting information.

(e) Updates policy and responsibilities relating to the management of covered schools that have an anti-ROTC policy.

<sup>4</sup>Although this resolution has been placed in the Statutes at Large as Pub. L. 90-331, 82 Stat. 170, it has not been codified; it is set out in the notes to 18 U.S.C. 3056.

### **§ 216.2 Applicability.**

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD components"). The policies herein also affect the Departments of Transportation, Labor, Health and Human Services, Education, and Related Agencies. The term "Military Services," as used herein, refers to the Army, the Navy, the Marine Corps, the Air Force, and the Coast Guard, including their Reserve or National Guard components. The term "Related Agencies," as used herein, refers to the Armed Forces Retirement Home, the Corporation for National and Community Service, the Corporation for Public Broadcasting, the Federal Mediation and Conciliation Service, the Federal Mine Safety and Health Review Commission, the National Commission on Libraries and Information Science, the National Council on Disability, the National Education Goals Panel, the National Labor Relations Board, the National Mediation Board, the Occupational Safety and Health Review Commission, the Physician Payment Review Commission, the Prospective payment Assessment Commission, the Social Security Administration, the Railroad Retirement Board and the United States Institute of Peace.

### **§ 216.3 Definitions.**

(a) *Anti-ROTC policy.* A policy or practice whereby a covered school prohibits or in effect prevents the Secretary of Defense from maintaining, establishing, or efficiently operating a unit of the Senior ROTC at the covered school, or prohibits or in effect prevents a student at the covered school from enrolling in a Senior ROTC unit at another institution of higher education.

(b) *Covered school.* An institution of higher education, or a subelement of an institution of higher education, subject to the following clarifications:

(1) In the event of a determination (§ 216.5) affecting only a subelement of a parent institution (see § 216.3(d)), the limitations on the use of funds

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(§216.4(a) and (b)) shall apply only to the subelement and not to the parent institution as a whole.

(2) The limitations on the use of funds (§216.4(a) and (b)) shall not apply to any individual institution of higher education that is part of a single university system if that individual institution does not prevent entry to campus, access to students, or access to student recruiting information by military recruiters, or have an anti-ROTC policy, even though another campus of the same system is affected by a determination under §216.5(a).

(c) *Student recruiting information.* For those currently enrolled, the student's name, address, telephone listing, age (or year of birth), level of education (e.g., freshman, sophomore, or degree awarded for a recent graduate), and major.

(d) *Institution of higher education.* A domestic college, university, or other institution (or subelement thereof) providing postsecondary school courses of study, including foreign campuses of such domestic institutions. The term includes junior colleges, community colleges, and institutions providing courses leading to undergraduate and post-graduate degrees. The term does not include entities that operate exclusively outside the United States, its territories, and possessions. A *subelement* of an institution of higher education is a discrete (although not necessarily autonomous) organizational entity that may establish policies or practices affecting military recruiting and related actions (e.g., an undergraduate school, a law school, a medical school, or other graduate schools). For example, the School of Law of XYZ University is a subelement of its *parent* institution (XYZ University).

(e) *Student.* An individual who is 17 years of age or older and is enrolled at a covered school.

(f) *Enrolled.* Registered for a least one credit hour of academic credit at the covered school during the most-recent, current, or next term.

(g) *Military recruiters.* Personnel of DoD whose current assignment or detail is to a recruiting activity of the DoD.

(h) *Pacifism.* Opposition to war or violence, demonstrated by refusal to participate in military service.

### §216.4 Policy.

It is policy that:

(a) Under 108 Stat. 2663 and 110 Stat. 3009, no funds available under appropriations acts for any fiscal year for the Departments of Defense, Transportation (with respect to military recruiting), Labor, Health and Human and Human Services, Education, and Related Agencies may be provided by contract or by grant (including a grant of funds to be available for student aid) to a covered school if the Secretary of Defense determines that the covered school has a policy or practice (regardless of when implemented) that either prohibits or in effect prevents the Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses, access to students on campuses, or access to directory information on students (student recruiting information).

(b) Under 110 Stat. 3009, no funds available under appropriations acts for any fiscal year for the Departments of Labor, Health and Human Services, Education, and Related Agencies may be provided by contract or grant (including a grant of funds to be available for student aid) to a covered school that has an anti-ROTC policy or practice (regardless of when implemented). Additionally, under 10 U.S.C. 983, no funds appropriated or otherwise available to the Department of Defense may be made obligated by contract or by grant to a covered school that has such a policy or practice.

(c) The limitations established in paragraph (a) of this section, shall not apply to a covered school if the Secretary of Defense determines that the covered school:

(1) Has ceased the policies or practices defined in paragraph (a) of this section;

(2) Has a long-standing policy of pacifism based on historical religious affiliation;

(3) When not providing requested access to campuses or to students on campus, certifies that all employers are similarly excluded from recruiting on the premises of the covered school,

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or presents evidence that the degree of access by military recruiters is at least equal in quality and scope to that afforded to other employers;

(4) When not providing any student recruiting information, certifies that such information is not maintained by the covered school; or that such information already has been provided to the Military Service concerned for that current semester, trimester, quarter, or other academic term, or within the past four months (for institutions without academic terms);

(5) When not providing student recruiting information for specific students, certifies that each student concerned has formally requested the covered school to withhold this information from third parties;

(6) Permits employers to recruit on the premises of the covered school only in response to an expression of student interest, and the covered school;

(i) Provides the Military Services with the same opportunities to inform the students of military recruiting activities as are available to other employers; or

(ii) Certifies that too few students have expressed an interest to warrant accommodating military recruiters, applying the same criteria that are applicable to other employers; or

(7) Is prohibited by the law of any State, or by the order of any State court, from allowing Federal military recruiting on campus. Such exemption does not apply to funds available to the Department of Defense, in accordance with 108 Stat. 2663.

NOTE: This exemption terminated effective March 29, 1998, in accordance with 110 Stat. 3009.

(d) The limitations established in paragraph (b) of this section, shall not apply to a covered school if the Secretary of Defense determines that the covered school:

(1) Has ceased the policies or practices defined in paragraph (b) of this section;

(2) Has a long-standing policy of pacifism based on historical religious affiliation;

(3) Is prohibited by the law of any State, or by the order of any State court, from allowing Senior Reserve Officer Training Corps activities on campus. Such exemption does not

apply to funds available to the Department of Defense, in accordance with 10 U.S.C. 983.

NOTE: This exemption terminated effective March 29, 1998, in accordance with 110 Stat. 3009.

(e) A covered school may charge for actual costs incurred in providing military recruiters access to student recruiting information, provided such charges are reasonable and customary; in this case, the school must explain to the military recruiter, within 15 days of a request by the recruiter, its method for determining costs, and its basis for concluding that such charges are reasonable and customary.

(f) An evaluation to determine whether a covered school maintains a policy or practice covered by paragraph (a) of this section shall be undertaken when:

(1) Military recruiting personnel cannot gain entry to campus, cannot obtain access to students on campus, or are denied access to student recruiting information (however, military recruiting personnel shall accommodate a covered school's reasonable preferences as to times and places for scheduling on-campus recruiting, to the same extent such preferences are applicable to employers, generally);

(2) The costs being charged by the school for providing student recruiting information are believed by the military recruiter to be excessive, and the school does not provide information sufficient to support a conclusion that such charges are reasonable and customary; or

(3) The covered school is unwilling to declare in writing, in response to an inquiry from a DoD component, that the covered school does not have a policy or practice of denying, and that it does not effectively prevent, the Secretary of Defense from obtaining for military recruiting purposes entry to campuses, access to students on campuses, or access to student recruiting information.

(g) An evaluation to determine whether a covered school has an anti-ROTC policy covered by paragraph (b) of this section shall be undertaken when:

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(1) A Secretary of a Military Department of designee cannot obtain permission to establish, maintain, or efficiently operate a unit of the Senior ROTC; or

(2) Absent a Senior ROTC unit at the covered school, students cannot obtain permission from a covered school to participate, or are effectively prevented from participating, in a unit of the Senior ROTC at another institution of higher education.

### §216.5 Responsibilities.

(a) The Assistant Secretary of Defense for Force Management Policy, under the Under Secretary of Defense for Personnel and Readiness, shall:

(1) Not later than 45 days after receipt of the information described in paragraph (b)(3) of this section:

(i) Make a final determination under 108 Stat. 2663, 10 U.S.C., section 983; and 110 Stat. 3009 and/or this part, and notify any affected school of that determination along with the basis, and that it is therefore ineligible to receive prescribed funds as a result of that determination.

(ii) Disseminate to Federal agencies affected by 110 Stat. 3009, to the DoD components, and to the General Services Administration (GSA) the names of covered schools identified under paragraph (a)(1)(i) of this section, and the basis of the determination.

(iii) Disseminate the names of covered schools identified under paragraph (a)(1)(i) of this section, to the Secretary of Education and to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives.

(iv) Inform the applicable school identified under paragraph (a)(1)(i) of this section, that its funding eligibility may be restored if the school provides sufficient new information that the basis for the determination under paragraph (a)(1)(i) of this section no longer exists.

(2) Not later than 45 days after receipt of a covered school's request to restore its eligibility:

(i) Determine whether the funding status of the covered school should be changed, and notify the applicable school of that determination.

(ii) Notify the parties reflected in paragraphs (a)(1)(ii) and (iii) of this section when a determination of funding ineligibility (paragraph (a)(1)(i) of this section) has been rescinded.

(3) Publish in the FEDERAL REGISTER each determination of the Assistant Secretary of Defense for Force Management Policy that a covered school is ineligible for contracts and grants made under 108 Stat. 2663, 10 U.S.C., section 983, and 110 Stat. 3009 and/or this part.

(4) Publish in the FEDERAL REGISTER at least once every six months a list of covered schools that are ineligible for contracts and grants by reason of a determination of the Secretary of Defense under 108 Stat. 2663, 10 U.S.C., section 983, and 110 Stat. 3009 and/or this part.

(b) The Secretaries of the Military Departments shall:

(1) Identify covered schools that, by policy or practice, deny military recruiting personnel entry to the campus(es) of those schools, access to their students, or access to student recruiting information.

(i) When requests by military recruiters to schedule recruiting visits or to obtain student recruiting information are unsuccessful, the Military Service concerned shall seek written confirmation of the school's present policy from the head of the school through a letter of inquiry. A letter similar to that shown in appendix A of this part shall be used, but it should be tailored to the situation presented. If written confirmation cannot be obtained, oral policy statements or attempts to obtain such statements from an appropriate official of the school shall be documented. A copy of the documentation shall be provided to the covered school, which shall be informed of its opportunity to forward clarifying comments to accompany the submission to the ASD(FMP), and shall be provided 30 days to offer such clarifying comments.

(ii) When a request for student recruiting information is not fulfilled within a reasonable period, normally 30 days, a letter similar to that shown in appendix A of this part shall be used to communicate the problem to the school, and the inquiry shall be managed as described in §216.5.(b)(1)(i).

Schools may stipulate that requests for student recruiting information shall be in writing.

(2) Identify covered schools that, by policy or practice, deny establishment, maintenance, or efficient operation of a unit of the Senior ROTC, or deny students permission to participate, or effectively prevent students from participating in a unit of the Senior ROTC at another institution of higher education. The Military Service concerned shall seek written confirmation of the school's policy from the head of the school through a letter of inquiry. A letter similar to that shown in appendix B of this part shall be used, but it should be tailored to the situation presented. If written confirmation cannot be obtained, oral policy statements or attempts to obtain such statements from an appropriate official of the school shall be documented. A copy of the documentation shall be provided to the covered school, which shall be informed of its opportunity to forward clarifying comments to accompany the submission to the ASD(FMP), and shall be provided 30 days to offer such clarifying comments.

(3) Evaluate responses to the letter of inquiry, and other such evidence obtained in accordance with this part, and submit to the ASD(FMP) the names and addresses of covered schools that are believed to be in violation of policies established in §216.4. Full documentation shall be furnished to the ASD(FMP) for each such covered school, including the school's formal response to the letter of inquiry, documentation of any oral response, or evidence showing that attempts were made to obtain either written confirmation or an oral statement of the school's policies.

(c) The Heads of the DoD components shall:

(1) Provide the ASD(FMP) with the names and addresses of covered schools identified as a result of evaluation(s) required under §§216.4(f) and (g).

(2) Take immediate action to deny obligations of DoD Funds to covered schools identified under paragraph (a)(1)(i) of this section, and to restore eligibility of covered schools identified under paragraph (a)(2) of this section.

#### §216.6 Information requirements.

The information requirements identified at §§216.5 (b) and (c)(1) have been assigned Report Control Symbol P&R-(AR)-2038 in accordance with DoD 8910.1-M.<sup>1</sup>

#### APPENDIX A OF PART 216—MILITARY RECRUITING SAMPLE LETTER OF INQUIRY

(Tailor letter to situation presented)

Dr. John Doe  
President  
ABC College  
Anywhere, USA 12345-9876

Dear Dr. Doe: I understand that military recruiting personnel (are unable to recruit on the campus of ABC College) (have been refused student recruiting information<sup>1</sup> on ABC College students for the purpose of military recruiting) by a policy or practice of the College. Current law<sup>2</sup> prohibits funds by grant or contract (including a grant of funds to be available for student aid) from appropriations of the Departments of Defense, Transportation (with respect to military recruiting), Labor, Health and Human Services, Education, and Related Agencies to schools that have a policy or practice of denying military recruiting personnel entry to campuses, access to students on campuses, or access to student recruiting information. Implementing regulations are codified at 32 Code of Federal Regulations, part 216.

This letter provides you an opportunity to clarify your institution's policy regarding military recruiting on the campus of ABC College. In that regard, I request, within the next 30 days, a written policy statement of the institution with respect to access to campus and students, and to student recruiting information by military recruiting personnel.

Your response should highlight any difference between access for military recruiters and access for recruiting by other potential employers.

Based on this information, Department of Defense officials will make a determination as to your institution's eligibility to receive funds by grant or contract. That decision may affect eligibility for funding from appropriations of the Departments of Defense, Transportation, Labor, Health and Human Services, Education, and Related Agencies.

<sup>1</sup>Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

<sup>1</sup>Student recruiting information refers to a student's name, address, telephone listing, age (or year of birth), level of education (e.g., freshman, sophomore, or degree awarded for a recent graduate), and major.

<sup>2</sup>108 Stat. 2663 and 110 Stat. 3009.

Should it be determined that ABC College is in violation of the aforementioned statutes, such funding would be stopped, and the school would be ineligible to receive such funds in the future.

I regret that this action may have to be taken. Successful recruiting requires that Department of Defense recruiters have reasonable access to students on the campuses of colleges and universities, and at the same time have effective relationships with the officials and student bodies of those institutions. I hope it will be possible to (define the correction to the aforementioned problem area(s)). I am available to answer any questions.

Sincerely,

APPENDIX B OF PART 216—ROTC  
SAMPLE LETTER OF INQUIRY

(Tailor Letter to Situation Presented)

Dr. Jane Smith  
President  
ABC College  
Anywhere, USA 12345-9876

Dear Dr. Smith: I understand that ABC College has (refused a request from a Military Department to establish a Senior ROTC unit at your institution) (refused to continue existing ROTC programs at your institution) (prevented students from participation at a Senior ROTC program at another institution) by a policy or practice of the College. Current law<sup>1</sup> prohibits funds by grant or contract (including a grant of funds to be available for student aid) from appropriations of the Departments of Defense, Labor, Health and Human Services, Education, and Related Agencies to schools that have a policy or practice prohibiting or preventing the Secretary of Defense from maintaining, establishing, or efficiently operating a Senior ROTC unit. Those statutes also bar agency funds for schools that prohibit or prevent a student from enrolling in an ROTC unit at another institution of higher education. Implementing regulations are codified at 32 Code of Federal Regulations, part 216.

This letter provides you an opportunity to clarify your institution's policy regarding ROTC access on the campus of ABC College. In that regard, I request, within the next 30 days, a written statement of the institution with respect to (define the problem area(s)).

Based on this information, Department of Defense officials will make a determination as to your institution's eligibility to receive funds by grant or contract. The decision may affect eligibility for funding from appropriations of the Departments of Defense, Labor, Health and Human Services, Education, and Related Agencies. Should it be determined that ABC College is in violation of the afore-

mentioned statutes, such funding would be stopped, and the school would be ineligible to receive such funds in the future.

I regret that this action may have to be taken. Successful officer procurement requires that the Department of Defense maintain a strong ROTC program. I hope it will be possible to (define the correction to the aforementioned problem area(s)). I am available to answer any questions.

**PART 218—GUIDANCE FOR THE DETERMINATION AND REPORTING OF NUCLEAR RADIATION DOSE FOR DoD PARTICIPANTS IN THE ATMOSPHERIC NUCLEAR TEST PROGRAM (1945–1962)**

Sec.

- 218.1 Policies.
- 218.2 General procedures.
- 218.3 Dose reconstruction methodology.
- 218.4 Dose estimate reporting standards.

AUTHORITY: Pub. L. 98-542, 98 Stat. 2725 (38 U.S.C. 354 Note.)

SOURCE: 50 FR 42521, Oct. 21, 1985, unless otherwise noted.

**§218.1 Policies.**

(a) Upon request by the Veterans Administration in connection with a claim for compensation, or by a veteran or his or her representative, available information shall be provided by the applicable Military Service which shall include all material aspects of the radiation environment to which the veteran was exposed and shall include inhaled, ingested and neutron doses. In determining the veteran's dose, initial neutron, initial gamma, residual gamma, and internal (inhaled and ingested) alpha, beta, and gamma shall be considered. However, doses will be reported as gamma dose, neutron dose, and internal dose. The minimum standards for reporting dose estimates are set forth in §218.4.

(b) The basic means by which to measure dose from exposure to ionizing radiation is the film badge. Of the estimated 220,000 Department of Defense participants in atmospheric nuclear weapons tests, about 145,000 have film badge dose data available. The information contained in the records has been reproduced in a standard format and is being provided to each military service, which can use the film badge

<sup>1</sup> 10 U.S.C. 983 and 110 Stat. 3009.